

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE DISTRICT OF PUERTO RICO

3 UNITED STATES OF AMERICA,

4 Plaintiff,

5 v.

6 CRIMINAL : 12-316 (DRD)

7 JUANA FERNÁNDEZ-FORTUNA,

8 Defendant.

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10 MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION
RE: RULE 11(c)(1)(B) PROCEEDINGS (PLEA OF GUILTY)

11 **I. Procedural Background**

12 On April 24, 2012, Juana Fernández-Fortuna (hereinafter referred to as "defendant"), assisted
13 and represented by counsel, waived her right to be charged by means of an indictment, consented to the
14 filing of an information, and entered a guilty plea as to count one of the information. Count one charges
15 that on or about September 14, 2008, in the District of Puerto Rico and within the jurisdiction of this
16 Court, Juana Fernández-Fortuna, defendant herein, knowingly and unlawfully uttered, possessed, and/or
17 used documents prescribed by statute or regulations as evidence of authorized stay in the United States,
18 to wit: a non-immigrant visa B-1/B-2 foil #20361077, which the defendant knew to be forged or
19 unlawfully obtained, in violation of Title 18, United States Code, Section 1546(a).

20 **II. Consent to Proceed Before a Magistrate Judge**

21 In open court the defendant was questioned as to the purpose of the hearing being held and was
22 advised of: (a) the nature and purpose of the hearing; (b) the fact that all inquiries were to be conducted
23 under oath and that it was expected that her answers would be truthful; (c) the potential consequences
24 of lying under oath (such as a perjury charge); and (d) her right to have the entry of plea proceedings
25 presided by a district judge instead of a magistrate judge. The defendant was also explained the
26 differences between the appointment and functions of the two. The defendant consented to proceed
27 before the undersigned magistrate judge.

III. Proceedings Under Rule 11, Federal Rules of Criminal Procedure

A. Rule 11(c)(1) Requirements

Rule 11 of the Federal Rules of Criminal Procedure governs the acceptance of guilty pleas to federal criminal violations. Pursuant to Rule 11, in order for a plea of guilty to constitute a valid waiver of the defendant's right to trial, guilty pleas must be knowing and voluntary: "Rule 11 was intended to ensure that a defendant who pleads guilty does so with an 'understanding of the nature of the charge and consequences of her plea.'" United States v. Cotal-Crespo, 47 F.3d 1, 4 (1st Cir. 1995) (quoting McCarthy v. United States, 394 U.S. 459, 467 (1969)). [There are three core concerns in these proceedings]: 1) absence of coercion; 2) understanding of the charges; and 3) knowledge of the consequences of the guilty plea. United States v. Cotal-Crespo, 47 F.3d at 4 (citing United States v. Allard, 926 F.2d 1237, 1244-45 (1st Cir. 1991)).

United States v. Hernández-Wilson, 186 F.3d 1, 5 (1st Cir. 1999).

B. Admonishment of Constitutional Rights

To assure defendant's understanding and awareness of her rights, defendant was advised of her right:

1. To remain silent at trial and be presumed innocent, since it is the government who has the burden of proving her guilt beyond a reasonable doubt.

2. To testify or not to testify at trial, and that no adverse inference could be made in relation to her decision not to testify.

3. To a speedy trial before a district judge and a jury, at which she would be entitled to see and cross examine the government witnesses, present evidence on her behalf, and challenge the government's evidence.

4. To have a unanimous verdict rendered by a jury of twelve persons which would have to be convinced of defendant's guilt beyond a reasonable doubt by means of admissible evidence.

5. To use the subpoena power of the court to compel the attendance of witnesses.

Upon listening to the defendant's responses, observing her demeanor and her speaking with her attorney, that to the best of counsel's belief defendant had fully understood her rights, it is determined that defendant is aware of her constitutional rights.

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C. Consequences of Pleading Guilty

Upon advising defendant of her constitutional rights, she was further advised of the consequences of pleading guilty. Specifically, defendant was advised that by pleading guilty and upon having her guilty plea accepted by the court, she will be giving up the above rights and will be convicted solely on her statement that she is guilty.

Furthermore, the defendant was admonished of the fact that by pleading guilty she would not be allowed later on to withdraw her plea because she eventually might disagree with the sentence imposed, and that if she violates the conditions of supervised release, that privilege could be revoked and she could be required to serve an additional term of imprisonment. She was also explained that parole has been abolished.

In response to further questioning, defendant was explained and she understood that if convicted on count one she will face a term of imprisonment of not more than ten (10) years, a fine not greater than two hundred fifty thousand dollars (\$250,000.00), and a term of supervised release of not more than three (3) years.

The defendant was advised that the ultimate sentence was a matter solely for the court to decide in its discretion and that, even if the maximum imprisonment term and fine were to be imposed upon her, she later could not withdraw her guilty plea for that reason alone. The defendant understood this.

The defendant acknowledged that at this stage no guarantees or promises as to the sentence to be imposed had been made to her. The defendant was also explained what the supervised release term means.

D. Plea Agreement¹

The parties have entered into a written plea agreement that, upon being signed by the government, defense attorney and defendant, was filed and made part of the record. Defendant was clearly warned and recognized having understood that:

1. The plea agreement is not binding upon the sentencing court.

¹ "Plea agreement" refers to the agreement and its supplement.

2 2. The plea agreement is an agreement between the defendant, defense counsel and the
3 attorney for the government which is presented as a recommendation to the court in regards to the
4 applicable sentencing adjustments and guidelines, which are advisory.

5 3. The agreement provides a sentencing recommendation and/or anticipated sentencing
6 guideline computation, that can be either accepted or rejected by the sentencing court.

7 4. In spite of the plea agreement and any sentencing recommendation contained therein, the
8 sentencing court retains full discretion to reject such plea agreement and impose any sentence up to the
9 maximum possible penalty prescribed by statute.

10 Defendant acknowledged having understood this explanation.

11 **E. Government's Evidence (Basis in Fact)**

12 The government presented a proffer of its evidence consistent with the version of facts of the
13 plea agreement with which the defendant concurred. Accordingly, it is determined that there is a basis
14 in fact and evidence to establish all the elements of the offense charged.

15 **F. Voluntariness**

16 The defendant accepted that no threats had been made to induce her to plead guilty and that she
17 did not feel pressured to plead guilty.

18 **G. Waiver of Appeal**

19 The defendant was explained, and she understood, that if the court accepts the plea agreement
20 and sentences her according to its terms and conditions, she will be surrendering her right to appeal the
21 sentence and judgment in this case.

22 **H. Administrative Consequences**

23 Defendant was warned, and she understood, that her decision to enter a guilty plea in this case
24 may have negative effects upon her immigration status in the United States.

25 **IV. Conclusion**

26 The defendant, by consent, has appeared before me pursuant to Rule 11, Federal Rules of
27 Criminal Procedure, and has entered a plea of guilty as to count one of the information. After
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cautioning and examining the defendant under oath and in open court, concerning each of the subject matters mentioned in Rule 11, as described in the preceding sections, I find that defendant Juana Fernández-Fortuna is competent to enter this guilty plea, is aware of the nature of the offense charged and the maximum statutory penalties that the same carries, understands that the charge is supported by the government's evidence, has admitted to every element of the offense charged, and has done so in an intelligent and voluntary manner with full knowledge of the consequences of her guilty plea. Therefore, I recommend that the court accept the guilty plea of the defendant and that the defendant be adjudged guilty as to count one of the information.

This report and recommendation is filed pursuant to 28 U.S.C. § 636(b)(1)(B). Any objections to the same must be specific and must be filed with the Clerk of Court within fourteen (14) days of its receipt. Fed. R. Civ. P. 72(b). Failure to timely file specific objections to the report and recommendation is a waiver of the right to review by the district court. United States v. Valencia-Copete, 792 F.2d 4 (1st Cir. 1986).

SO RECOMMENDED.

In San Juan, Puerto Rico, this 2nd day of May 2012.

s/Marcos E. López
U. S. MAGISTRATE JUDGE